

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1860 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BJ PATEL

Versus

GUSAR ARTHAKASHAM SEVA

SAHAKARI MANDLI LTD

Appearance:

MR RN SHAH for Petitioner

MR PJ KANABAR for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/09/97

ORAL JUDGEMENT

1. Admit. Mr.Kanaba appears and waives service of admission on behalf of respondent. Appellant-defendant namely B.J.Patel, Proprietor of Agro Service Centre is aggrieved by the judgment and decree, dated 16.2.1996 passed by the 3rd Jt.Civil Judge (SD) at Godhra in Spl.C.S.No.31/94 for a sum of Rs.55575/- with interest at the rate of 18%p.a. from 30.5.92 till its realisation

and also dismissing the counterclaim which was preferred by the appellant-defendant.. It appears that the respondent-plaintiff -Gausar Arthakasgham Seva Sahakari Mandali Ltd instituted the aforesaid SCS No.31/94 to recover the principal amount with interest at the rate of 18% p.a. and with costs of the suit. The principal amount claimed was the amount of Rs.55575/- and the interest was claimed upto the date of the suit being Rs.18,340/-. Thus the suit was filed for total amount of Rs.74466/-. On service of summons the appellant-defendant filed written statement at Exh.13 and the main defense of the defendant was that the goods which were ordered by the defendant were not as per the order and that they were not of good quality and that they were of inferior quality. It was also submitted by the defendant that the plaintiff has failed to supply the certificate of Seed Corporation along with bill and had such certificate been supplied it would have been established that the goods were of good quality or not. The absence of supply of certificate of Seeds Corporation itself was sufficient, according to the defendant, to establish that the plaintiff was not entitled to recover the price of the goods supplied and that the Sahakari Mandali was called upon to take back the goods but the Sahakari Mandali sent the bill and did not take goods back. The aforesaid controversy has given rise to the suit and the trial court having framed the issues at Exh.19 and after recording the evidence of the parties namely at Exh.23 and Exh.57 on behalf of the plaintiff while Exhs 82 & 84 on behalf of defendant recorded its finding in favour of Sahakari Mandali.

2. This court has heard Mr.M.R.Shah, Ld.advocate for appellant as well as Mr.P.J.Kanaba for respondent and having heard them at sufficient length and more particularly having considered the contention of the defendant about inferior quality and nonsupply of certificate of Seeds corporation and in view of the fact that there was overall consensus between two parties that the interest of justice will be met if decree of Rs.55575/- being the principal amount is maintained in favour of plaintiff, this court is inclined to modify the judgment and decree of the trial court and substitute following judgment and decree. Before passing the aforesaid substituted decree this court must observe that ordinarily the Seva Sahakari Mandali would not waive its claim for interest at the rate of 18% p.a. especially when the goods are already utilized by the defendant, but as a special case without establishing any precedent whatsoever in this behalf the judgment and decree of the trial court is modified and substituted by the following

judgment and decree:

"The suit of the plaintiff is decree for the principal amount of Rs.55575/- which shall be paid by the defendant to the plaintiff within three months i.e. by 31st December, 1997. There shall be no decree for the interest and costs in favour of plaintiff and against defendant because this court is expediting the payment of principal amount within a period of three months."

3. In the result, appeal partially succeeds to the aforesaid extent only. There shall be no costs.

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